BUSINESS & LABOR
EXHIBIT NO. 13
DATE 1-27-09
BILL NO. SB 151

THE SECONDARY MARKET FOR LIFE INSURANCE

What is a life settlement?

A life settlement is the sale to a third party of an existing insurance policy for more than its cash surrender value, but less than its net death benefit. In a life settlement, the insured is generally 65 years of age or older and does not have a terminal or chronic illness.

Life settlements allow consumers the ability to exercise their PROPERTY RIGHT to assign their life insurance policy and obtain a competitive market value for the asset of insurance. Almost 100 years ago, the United States Supreme Court held that:

> [L]ife insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property.... To deny the right to sell except to persons having such an [insurable] interest is to diminish appreciably the value of the contract in the owner's hands.

Life settlement companies allow the policyowner to capture the true market value of his or her policy by selling in an open and competitive market and obtaining the best value for unaffordable, unneeded or unwanted life insurance policies over the alternative of surrendering it or allowing it to lapse.

Are life settlements good for the consumer?

Yes. Life settlements pay, on average, three to five times the cash surrender value of a policy is going to be lapsed or surrendered.

Almost 9 of 10 life insurance policies lapse or are surrendered back to the insurance, paying policyowners little or nothing from the insurance company. By exercising their property rights, seniors are protected from the anti-consumer product design which dominates today's primary market.

Carriers lure consumers to purchase and maintain life insurance by underpricing universal life policies, then offerering "grossly inadequate cash values" upon lapse, according to Northwestern Mutual chief actuary. He stated that "[t] vast majority of policyholders who lapse their policies before death are the 'losers.' They receive much less at surrender than what any reasonable person would perceive as acceptable value."

A life settlement can have a tremendous positive impact on a retired senior whose other assets have depreciated in these harsh economic times. For the individual who simply cannot keep paying premiums on a policy because her stock or real estate investments have suffered, maximizing the value of her life insurance policy can help her maintain her standard of living. Settlement proceeds are also used to purchase new insurance – including life insurance or long term care insurance – improve a home, fund a grandchild's education, start a small business, pay medical expenses, repay debts or deal with an unexpected life change.

Simply put, a policyowner's right and ability to sell some or a portion of their life insurance provides flexibility to meet pressing financial needs with money that ultimately belongs to the policyowner.

Why consider a life settlement?

Life settlements are considered for a variety of reasons, such as:

- A policy is no longer needed or wanted (e.g., spouse dies, divorce, children are grown up and financially responsible, etc.)
- Changes in estate or financial plans or changes in law, etc., occur subsequent to policy issuance
- To pay for healthcare costs
- Premium payments have become unaffordable as policy owners grow older
- People change their minds and consider lapse or surrender of a policy
- The investment in the insurance is no longer appropriate.

How does a life settlement work?

Life settlements typically begin with the filing of a settlement application by a policy owner and insured, together with necessary documentation. A life settlement provider will verify the insurance coverage and the insured's medical status, and will determine the policy's viability for a life settlement (including reviewing the case for potential fraud). The life settlement provider will also determine suitability for funding and will match the policy with an appropriate institutional funding source that could acquire the policy. The life settlement provider will then relay an offer to the advisor of the policyowner. If the offer is accepted, a closing package will be delivered to the policyowner's advisor. Signed documents are then returned to the life settlement provider and, assuming everything is complete, the insurance carrier is notified. Following written verification of the change of ownership of the policy, settlement funds are transferred to policyowner from escrow.

Is the life settlement industry regulated and, if so, who regulates it?

Life settlements are currently regulated in 30 states, and legislation to regulate life settlements in the remaining states was proposed in over a dozen states in 2008. Regulation of life settlements is generally administered through the respective insurance departments of each state.

What is non-recourse premium financing?

Life insurance consumers – and their licensed advisors – have increasingly become aware that the market value of life insurance policies includes the property right to exercise the assign that policy for their own benefit. In recent years, policyowners have realized the competitive value of their life insurance policies at the surrender of a policy through life settlements. As an alternative to the lapse or surrender of unaffordable, unwanted or unneeded policies, life settlements pay policyowners an average of three to four times more than the cash surrender value of the policy.

More recently, consumers have been able to utilize the property rights and market value of life insurance to obtain needed life insurance through "non-recourse premium financing." Non-recourse premium financing enables consumers to obtain a loan to pay premiums for new or in-force life insurance by pledging the policy as the sole collateral to secure the loan. This efficient form of premium financing helps prospective policyowners and policyowners obtain and maintain needed life insurance. Life insurance companies, as well as national banks and other licensed lenders, are actively promoting non-recourse premium financing and other loan programs which utilizes the true value of life insurance as collateral for such loans.

Non-recourse premium financing accepts the market value of the policy as collateral for the loan, thus eliminating, in most cases, the need for additional collateral. This efficiency in lending, while new for life insurance, is commonplace in all other financial transactions – consider that a homeowner only has to pledge the home to secure a mortgage.

Thus, the property rights in life insurance and the presence of a market for life settlements has empowered otherwise qualified applicants for life insurance to obtain needed life insurance. Again, consider how many people would own property (car/home) if there was a need to pledge more than the property to obtain it.

AMENDMENTS TO SB151 PROTECTS MONTANA CONSUMERS' PROPERTY RIGHTS IN LIFE INSURANCE

The amendments to SB151 establish important and necessary consumer protections against the documented evidence of life insurers' conduct that harms life insurance policyowners. Carriers are engaged in systematic, protectionist market conduct that deprives policyowners of access to information and assistance about their rights under their policies and steals from these policyowners the true value that a life settlement can provide. The amendments to SB151:

- **Responds to the evidence of consumers harm and protects consumers' rights** by:
    - informing policyowners about the option of a life settlement under appropriate circumstances;
    - prohibiting insurance companies from interfering with life settlements; and
    - protecting life insurance agents who lawfully assist a policyowner with a life settlement.

- **Protects the property rights of Montana life insurance policyowners.** Life insurance companies are issuing false and misleading information about life settlements, prohibiting life insurance producers from discussing or assisting policyowners with the option of a life settlement. This deprives Montana consumers with the inherent rights and value of their policy. The United States Supreme Court has long held that consumers' enjoy property rights in life insurance: "[L]ife insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property.... To deny the right to sell except to persons having such an [insurable] interest is to diminish appreciably the value of the contract in the owner's hands. *Grigsby v. Russell,* 222 U.S. 149 (1911).

- **Montana law already establishes that the best consumer is the informed consumer and requires disclosure of specific options to policyowners.** Montana Code Section 33-20-1311(2) requires life settlement companies to tell any policyowner who is seeking to sell her policy that there are "possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance polic." Therefore, consistent public policy would support that policyowners be told of the option of a life settlement whenever he or she is facing the lapse or surrender of her policy, or an accelerated death benefit or policy loan.

- **Ensures that policyowners can, if they choose, appraise the value of their policy prior to its lapses or surrender.** Life settlements pay policyowners an average of 300 to 500 percent more than the cash surrender value of the policy. Since almost 9 of 10 life insurance policies lapse or are surrendered, the option of a life settlement can make a significant difference for seniors whose other assets have been depreciated in today's harsh economic times.

- **Protects life insurance producers against violating their statutory duty to their clients.** Life insurance companies the prohibit life insurance agents from aiding and assisting a policyowner with a life settlement are harming the consumer and placing the insurance agent in violation of the law. Montana Code Section 33-20-1303 establishes that a licensed life insurance producer is qualified and authorized as a settlement broker, thus establishing in the law the preference that policyowners can and should be able to obtain assistance about life settlements from their life agent. Further, the Code provides that a life insurance producer, acting as a settlement broker "represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator."

Amendments to Senate Bill No. 151
1st Reading Copy

Requested by

For the Senate Business, Labor and Economic Affairs Committee

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January 26, 2009

1. Page 2, line1.
Following: "means"
Strike: "a practice or plan"
Insert: "an act, practice, or arrangement"
Following: "initiate"
Insert: "the issuance of"

2. Page 2, line 2.
Following: "policy"
Insert: "in this state"
Following: "interest"
Insert: "under the laws of this state,"
Following: "in the"
Insert: "life of the"

3. Page 2, line 4.
Following: "or"
Strike: "guaranties"
Insert: "guarantees"

4. Page 2, line 5.
Following: "agreement"
Strike: ", whether verbal or written,"

5. Page 2, line 11.
Following: "settlement"
Strike: "contract"

6. Page 2, line 12.
Following: "settlement"
Strike: "contract"

7. Page 2, line 18.
Following: "settlement"
Strike: "contract"

8. Page 2, line 23.
Following: "settlement"
Strike: "contract"

9. Page 2, line 26.
Following: "settlement"
Strike: "contract"

10. Page 4, line 6.
Following: "into"
Strike: "any practice or plan that involves"

11. Page 4, line 7.
Following: "interest and"
Insert: "that"

12. Page 4, line 8.
Following: "life."
Insert: " STOLI arrangements do not include otherwise lawful life settlement contracts as permitted by Title 33, chapter 20, part 13."

13. Page 4, lines 9 through 11.
Strike: Subsection (3) in its entirety and renumber subsequent subsections

14. Page 4, line 12.
Following: "artifice"
Strike: ":"

15. Page 4, line 13.
Strike: "(a)"
Following: "settlements"
Strike: "; or"
Insert: "."

16. Page 4, lines 14-15.
Strike: Subsection 4(b) in its entirety

17. Page 5, line 10.
Following: "settlement"
Strike: "contract"

18. Page 5, line 17.
Following: "settlement"
Strike: "contract"

19. Page 8, line 6-7.
Following: "insurance"
Strike: "or a viatical settlement contract that is"
Following: "needs,"
Strike: "and"

20. Page 8, line 9.
Following: "payment;"
Insert: "or"

21. Page 8, line 10.
Following: "certificate"
Strike: "; or"
Insert: "."

22. Page 8, line 11.
Strike: Subsection 14(c) in its entirety

23. Page 10, line 8.
Insert: New Sections 6 and 7 with the following language and renumber subsequent sections accordingly:

NEW SECTION. **Section 6. Disclosure of viatical settlement availability to consumers.** With respect to each policy issued by an insurance company, the insurance company shall send written notice to the owner of an individual life insurance policy, or a certificate holder under a group life insurance policy, where the insured person under such policy is age sixty or older or is known to be terminally ill or chronically ill, that a viatical settlement contract is an available alternative transaction to such owner at the time of each of the following:

(1) when a life insurance company receives from such owner a request to surrender, in whole or in part, an individual life insurance policy, or a certificate under a group life insurance policy;

(2) when a life insurance company receives from such owner a request to receive an accelerated death benefit under an individual life insurance policy, or a certificate under a group life insurance policy;

(3) when a life insurance company receives from such owner a request to collaterally assign an individual life insurance policy, or a certificate under a group life insurance policy as security for a loan;

(4) when a life insurance company sends to such owner a notice of lapse of an individual life insurance policy, or a certificate under a group life insurance policy; or

(5) at any other time that the commissioner may require by rule or regulation consistent with this act.

**Note to drafter:
Codification instructions: This section is intended to be codified as an integral part of Title 33, chapter 20, part 1.

Section 7. Section 33-20-1302, MCA, is amended to read:

33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Financing entity" means an underwriter, placement agent, lender, or any entity, other than a nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.

(2) "Premium finance loan" is a loan made primarily for the purpose of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

(3) "Related provider trust" means a trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner.

(4) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(5) "Stranger-originated life insurance" or "STOLI" means an act, practice, or arrangement to initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest under the laws of this state, in the life of the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guaranties from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy, and where, at the time of inception, there is an arrangement or agreement, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party.

(6) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(7) (a) "Viatical settlement contract" means a written agreement entered into in this state between a viatical settlement provider and a viator, establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a viatical settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a viatical settlement contract.

(b) The term includes:

(i) the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(ii) a premium finance loan made for a policy on or before the date of issuance of the policy where one or more of the following conditions apply:

(A) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing.

(B) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy.

(C) The owner agrees on the date of the premium finance loan to sell the policy or any portion of the policy's death benefit on any date following the issuance of the policy, not including an agreement to sell the policy in the event of a default, provided that the default is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(c) The term does not mean

(i) a policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider.

(ii) a premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(iii) a collateral assignment of a life insurance policy by an owner.

(iv) a loan made by a lender provided such loan is not described in subsection (b)(ii) of this section and is not otherwise within the definition of life settlement contract.

(v) An agreement where all of the parties satisfy one of the following conditions:

(A) They are closely related to the insured by blood or law.

(B) They have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured.

(C) They are trusts established primarily for the benefit of those parties.

(vi) any designation, consent, or agreement by an insured whois an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer of life insurance on the life of the employee.

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders.

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners.

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business.

(ix) Any other contract, transaction, or arrangement from the definition of "life settlement contract" that the commissioner determines is not of the type intended to be regulated by this act.

(8) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

(9) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

(10) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

(11) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.

(b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

24. Page 11, line 13.
Following: "information to"
Insert: "applicant for new insurance and"

25. Page 11, line 13.
Following: "policyholder."
Insert: New subsection (1) with the following language and renumber subsequent

subsections:

"(1) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(a) If the premium finance loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application may be rejected as a prohibited practice under this act.

(b) If the financing does not violate paragraph (a) or violate the insurer's lawful underwriting guidelines, the insurer may not reject life insurance application solely because the premiums will be financed. The insurance carrier may make disclosures to the applicant, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including, but not limited to, the following: "If you have entered into a loan arrangement where the policy is used as collateral, and the policy changes ownership at some point in the future in satisfaction of the loan, the following may be true:

"(i) A change of ownership could lead to a stranger owning an interest in the insured's life.

"(ii) A change of ownership could in the future limit your ability to purchase insurance on the insured's life because there is a limit to how much coverage insurers will issue on a life.

"(iii) You should consult a professional adviser since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan."

(c) In addition to the disclosures in paragraph (b), the insurance carrier may require the following certifications from the applicant or the insured:

"(i) I have not entered into any agreement or arrangement under which I have agreed to make a future sale of this life insurance policy."

"(ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy."

"(iii) The borrower has an insurable interest in the insured.""

26. Page 12, lines 6 through 10.
Strike: Subsections 1(f) and 1(g) in their entirety

27. Page 12, line 14.
Following: "prescribed"
Insert: "or approved"

28. Page 13, line 5.
Following: "agent"
Insert: "; and"

29. Page 13, lines 6 through 8.
Strike: Subsection 1(q) in its entirety and renumber subsequent subsection

30. Page 13, line 11.
Following: "settlement"
Strike: "broker"
Insert: "provider"
Following: "viator"
Strike: "and the viatical settlement provider"

31. Page 13, line 14.
Following: "settlement"
Strike: "broker"
Insert: "provider"

32. Page 14, line2.
Following: "contract"
Insert: "at any time prior to the date of issuance of a policy or"

33. Page 16, line 27
Strike: "."
Insert: "; or"

34. Page 16, line 28.
Insert: New subsection 2(d) with the following language:

"(d) directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a new policy for the sole purpose of or with a primary emphasis on settling the policy."

35. Page 17, line 26.
Insert: New subsection (8) with the following language:

"(8) An insurer may not:

(a) prohibit, restrict, limit or impair a life insurance producer from lawfully negotiating a viatical settlement contract on behalf of a viator, aiding and assisting a viator or prospective viator with a viatical settlement contract, or otherwise participating in a viatical settlement transaction under this Act,

(b) engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a viatical settlement contract or being insured under a viaticated policy,

(c) make any false or misleading statement as to the business of viatical settlements or financing premiums due for a policy or to any policyowner or insured for the purpose of inducing or tending to induce the policyowner or insured not to enter into a viatical settlement contract, or

(d) engage in any transaction, act, practice or course of business or dealing which restricts, limits or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy."